IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1709 OF 2005
IN
CRIMINAL APPEAL NO. 263 OF 2005

Girishchandra Ramkrishna Joshi ... Applicant

V/s

1 Union of India (CBI-Mumbai at the instance of Union Bank of India) & Anr. ... Respondents

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Mr. M.S. Udeshi with Mr. R.R.Sharma for applicant

Shri D.R. Sadvi, PP for respondent No.1

Shri A.M.Shingarpure, APP for respondent No.2

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Coram : V.M.Kanade,J.
Dated : 07/04/2005.

P.C. :-

1 The applicant is convicted for an offence punishable under section 120(B) read with section 409 of the Indian Penal Code and under section 13(1)(c) & (d) read with section 13(2) of the Prevention of Corruption Act 1988 and is sentenced to suffer R.I. for 5 years and to pay a fine of Rs.10000/-, in default further imprisonment for 6 months respectively.

2 The criminal appeal was admitted on 16/3/2005. When

the appeal was filed the appellant-original accused No.1 was not given the certified copy of the judgment and order passed by the trial court. Thereafter, the certified copy of the judgment and order was made available to the appellant.He has filed the certified copy of the judgment and order along with ledger copy. The leave to amend has granted to the appellant to annexe the ledger copy which is tendered in the court along with appeal memo.

3 The prosecution case in brief is that conspiracy was hatched between applicant herein and accused No.2, Sunder Poojary, accused No.4, Ravi Shankar Rai and deceased accused Ramkrishna Joshi to defraud Union Bank of India Home Street Branch, Fort,Mumbai and with an object of criminal conspiracy accused No.1 Girish Joshi opened and operated 7 accounts viz. (i) SB A/c 900 was in his name, (ii)SB A/c No. 10184 was in the name of deceased accused Ramkrishna Joshi and himself; (iii)SB A/c 10622 was in the name of deceased Ramkrishna Joshi, Mrs.Savita R. Joshi and Mr. N.R. Joshi; (iv)SB A/c No.11147 was in his name; (v) SB A/c No. 11159 in the name of Mrs. S.B.Chougule and accused No.3 Laxman Chougule; (vi)SB A/c No.11307 was in the name of Harish Poojary; and (vii)SB A/c No. 11580 was in the name of accused No.2 Sunder Poojary.

4 The accused No.1/applicant herein was the Special Assistance and it was his duty to have supervisory control

over all the books of account and to countersign the cheques which were received by the clerk at the counter before the entries were made in the books of account.

5 The prosecution case is that accused No.1/applicant herein forged the signatures of his wife Mrs.Renuka Joshi for the purpose of opening SB A/c No.11147 and also forged the signature of his father and his brother for the purpose of issuing the cheques from SB A/c Nos. 10184,10622 and 11147, The accused No.2 also forged the signature of fictitious person Mr.Harish Poojary on Account Opening Form SB A/c No.11307 and several cheques were drawn on the said SB A/c No. 11307. The prosecution case is that alterations were made in the ledger entries and cheques which were deposited were passed by the accused No.1 as the Special Assistance.The entire money was siphoned off and the amount was defrauded and misappropriated in this manner. According to the prosecution, the accused had misappropriated the amount of Rs.46,93,683.11 belonging to Union Bank of India,Home Street, Fort, Mumbai. On the basis of evidence adduced by the prosecution the accused was convicted and was sentenced to suffer R.I. for 5 years.

6 It is submitted on behalf of the applicant that proper sanction was not obtained by the prosecution. He has invited my attention to number of judgments of the Supreme Court and has submitted that if a sanction is not

properly

granted, the accused is entitled to be acquitted. He has submitted that the prosecution did not prove the entrustment of property to the accused and there was no documentary evidence to indicate the accused No.1 was appointed and was put in charge of entire affairs of the bank. He has, therefore, submitted that in the absence of evidence, the offence of breach of criminal procedure code 1976 is not established. In support of said submission, he has relied on the judgment of the Supreme Court wherein it is held that unless there is documentary proof to show that the accused was put in charge of affairs of the bank, there was no entrustment of the property. He has submitted that merely because the accused had an overall control over the property it would not amount to entrustment of the property. In support of his submission, he relies upon the judgment of the Supreme Court in the case of **Velji Govindji Patel v. State of Maharashtra** reported in **AIR 1965 Supreme Court 1433.** He has further submitted that since appeal is continuation to the criminal proceedings, the applicant is entitled to be released on bail. The applicant was on bail during trial.

7 The learned APP appearing on behalf of the State has vehemently opposed the submission made by the learned counsel for the applicant. The learned counsel for the applicant has invited my attention to a finding given by

the trial court when a question of sanction arose and has

submitted that the provisions of sections 120 and 197 are not attracted. The act which was committed by the public servant falls outside the purview of discharge of public duties. The learned APP has taken me to the judgment and order of the trial court and has submitted that the case against the applicant was established beyond reasonable doubt. It is not possible to accept the submission made by the learned counsel for the applicant. The trial court had considered the question of grant of sanction and has observed that there is no question of granting sanction and the accused were not entitled to claim protection under section 197 for the breach of Criminal Procedure Code.

8 The second submission made by the learned counsel for the applicant also cannot be accepted. It is an admitted position that the accused No.1/applicant herein was acting as Special Assistant and it was his duty to pass the cheques which were deposited in the bank after ascertaining that there was sufficient balance in the bank account and after verifying the speciman signature. It has come on record that that the accused and others had opened the saving account in the name of fictitious person and had issued the cheques from the fictitious account and thereafter the cheques were passed by the applicant and other accused. In this way the accused has misappropriated more than Rs.46 lakhs during a period of 4 years.

9 However, the position as on today is that accused are in jail. The office to immediately place the appeal on the final hearing board. In my view, considering the gravity of offence and possibility that the appeal filed by the appellant is likely to be heard and disposed of within a period of 6 months. I do not think that this is a fit case for the grant of bail. The applicant has defrauded Union Bank of India to the tune of Rs.46 lakhs. It is however possible that he may continue to carry his illegal activity if he is released on bail.In any case, liberty is granted to the applicant for applying for fixed date of hearing after preparing private paper book. Office to place the appeal on final hearing board as soon as private paper book is ready.

10 The applicant is also granted liberty to apply for bail by filing separate application, if the appeal is not heard within a period of one year. With the above directions,criminal application for bail is rejected.

(V.M. Kanade, J.)